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DECISION



H. N. Tietz
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185426

DATE: November 21, 1977

MATTER OF: Major Pedro J. Acevedo Torres, USAR

DIGEST: Army Reserve member's claim of entitlement to administrative function pay for period September 3, 1958, to February 14, 1965, during which period the regulations required contemporaneous affirmation on quarterly payroll that member actually performed required duties, was previously denied since such payroll affirmation was not made. It has now been determined that during the whole period of the member's claim the TO&E of the 369th Station Hospital to which he was assigned as Complement Commander did not recognize the Complement or any other part of the organization as a separate unit. Thus, the official responsibility for and control of the administrative function of the Complement remained with the 369th, and the member did not command a separate unit for which payment of administrative function pay is authorized.

This action is in response to letters dated October 13, 1976, and February 22, 1977, from Ismael Cardona, Esq., on behalf of Major Pedro J. Acevedo Torres, USAR, requesting reconsideration of our decision B-185426, September 21, 1976, which disallowed his claim for administrative function pay for the period September 5, 1958, to December 31, 1968, as Complement Commander of, among other units, the 369th Station Hospital (300B) MSC-USAR, San Juan, Puerto Rico.

In that decision, we stated that the member's entitlement to administrative function pay was dependent upon whether the requirements of Army Regulation (AR) 37-104, in effect during the period in question, were satisfied. Paragraph 20-46 of the 1957 edition of AR 37-104 (which was in effect until February 14, 1965), provides that eligibility for administrative function pay is dependent upon the

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faithful performance of administrative functions in keeping with the requirements of the position, which performance must be affirmed on the quarterly payroll by the unit advisor. In this connection, we stated in B-185426, supra:

"* * * The member has not submitted, nor does the record provide any evidence that the member was officially recognized as having performed the administrative functions of his unit. In the absence of the substantiation required by the regulation, there is no legal basis upon which the member's claim for administrative function pay for the period September 3, 1958, to February 14, 1965, may be allowed."

The 1965 edition of AR 37-104 deleted the requirement that the officer's eligibility for administrative function pay be formally affirmed on the quarterly payroll. Based on the holding in our decision B-147755, January 22, 1962, we said in B-185426, supra, that a member could receive administrative function pay if he commanded a separate organization, or if he commanded a subordinate unit and could show that he actually performed the required administrative functions of the unit. We further stated that if Major Acevedo Torres could establish those facts we would reconsider our decision disallowing his claim.

In support of this request for reconsideration, Mr. Cardona has submitted sworn statements from the Commanding Officers, Unit Advisor, Executive Officer, and other personnel of the 369th Station Hospital during most of the time that Major Torres served as Complement Commander. These statements are to the effect that the unit commanded by Major Torres was a separate unit for administrative purposes and that the member faithfully performed all required administrative duties.

In reviewing the file in this case it was noted that no report had been received from the Army concerning the eligibility of members in Major Torres' position to receive administrative function pay. In response to our request by letter dated August 1, 1977, from the Office of the Chief, Army Reserve, Washington, D.C. 20310, we have been advised that their records show that the 369th Medical Hospital Station (300-Bed) (CZ) was organized under Tables of Organization and Equipment (TO&E) 8-565A in 1953. In 1963, the

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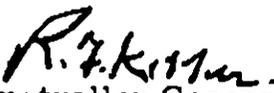
unit was reorganized as the 369th Medical Hospital Station, 300-Bed (with Professional Complement) under TO&E 8-565E.

The augmentation (with Professional Complement) was considered part of the TO&E authorized strength of the 369th, and not organized under a separate TO&E mobilization entity. Under the controlling regulations only commanders of TO&E units are eligible for administrative function pay. Since the TO&E of the unit of which the claimant was a member did not establish a separate or subordinate TO&E unit, for purposes of the controlling regulations administrative function pay is not allowable.

In addition we have been advised that while the Professional Complement was a subordinate part of the 369th, the administrative function of that part remained the responsibility of and under the control of the 369th.

In light of the fact that the Professional Complement of the 369th was not organized under a separate TO&E (nor was there any other TO&E unit subordinate to the 369th) the administrative function of the Professional Complement as well as all other parts thereof remained the official responsibility of the 369th. Thus, it is evident that the statements submitted may not be accepted as establishing the member's entitlement to administrative function pay for the period covered by the 1965 edition of the regulations.

Accordingly, we sustain our previous decision disallowing the member's claim.


Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

A. J. Murray
Inc. Per.

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November 21, 1977

The Honorable Baitasar Corrada
House of Representatives

Dear Mr. Corrada:

Reference is made to your letter of May 25, 1977, addressed to the Assistant Secretary of Defense (Comptroller), which has been forwarded to our Office for reply, in which you request information as to the status of the request of your constituent, Major Pedro J. Acevedo (Torres) for reconsideration of his claim for administrative pay as Complement Commander of the 369th Station Hospital (300-B), San Juan, Puerto Rico, for the period September 3, 1958, to February 14, 1965.

Enclosed is a copy of our decision, B-185426, of today sustaining our previous decision of September 21, 1976, denying the member's claim. The basis for this decision is that the records of the Office of the Chief, Army Reserve, Washington, D.C. 20310, show that the Professional Complement of which the member apparently was in charge was a part of the authorized strength of the 369th Medical Hospital Station and not a separate or subordinate unit. Further, the administrative function of the Complement was the official responsibility of the 369th and the member did not officially command a separate unit. Since the regulations in force at all times required that a member in order to be eligible for administrative function pay be in command of a separate TO&E unit, it has now been established that the claimant did not qualify for such pay.

We trust this will serve the purpose of your inquiry and regret that a decision more favorable to your constituent could not be reached.

Sincerely yours,

Deputy

R. F. Killian
Comptroller General
of the United States

Enclosure